

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition For Rulemaking by)	
Martha Wright, <i>et. al.</i>, on referral from)	DA 03-4027
<i>Wright v. Corrections Corporation of America,</i>)	
CA No 00-293 (GK) (D.D.C.))	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket No. 96-128
Of the Telecommunications Act of 1996)	

**REPLY COMMENTS
OF MCI, INC.**

MCI, Inc., formerly known as WorldCom, Inc. (“MCI”) hereby submits its reply in response to the comments filed in the above-captioned proceeding regarding the Petition for Rulemaking or, in the Alternative, Petition To Address Referral Issues in a Pending Rulemaking (“Wright Petition”). The record overwhelmingly demonstrates that the Wright Petition should be denied in its entirety. The Wright Petition raises issues that are beyond this Commission’s jurisdiction. In addition, the proposals in the Wright Petition are untenable as they are too costly and threaten prison officials’ ability to maintain public safety.

**I. PRISON AUTHORITIES SHOULD MAINTAIN CONTROL OVER THE
INMATE PAYPHONE SYSTEM**

As MCI and the majority of the commenters demonstrated, the Commission and the courts have consistently afforded prison officials great deference over the prison

telecommunications system.¹ This is true regardless of whether the institution is privately or publicly run.² As AT&T aptly stated, because prison officials are faced with the difficult and important task of maintaining public safety, the Commission has repeatedly deferred to prison officials in establishing prison telecommunications systems.³ For example, on three separate occasions the FCC has exempted departments of correctional services (“DOCS”) from TOCSIA, or billed party preference, requirements.⁴ Further, if the Commission was suddenly inclined to reverse course and prohibit exclusive contracts, there is nothing in the record that suggests that the Commission has the authority to do so. It is one thing to regulate carriers’ rates, but quite another to presume to know what is best for federal, state and local prison systems throughout the country. Indeed, neither the Petitioners nor their supporters cite to any authority for the Commission to act here.⁵ Nor do they explain why the FCC should substitute its judgment for those of prison officials around the country.⁶

¹ Comments of Corrections Corporation of America at 10-15 (“CCA Comments”); Comments of AT&T Corp. (“AT&T Comments”); Comments of the RBOC Payphone Coalition at 3-4 (“RBOC Coalition Comments”); Comments of T-Netix at 21-24 (“T-Netix Comments”).

² Although Petitioners tried to create a distinction between private and public prisons, private prisons are agents of federal and state correctional systems. MCI Comments at 16-17; *see also*, T-Netix Comments at 6-10; CCA Comments at 7; RBOC Coalition Comments at 6.

³ AT&T Comments at 6 (referring to the Commission’s repeated acknowledgement of the unique status of inmate calling services in the billed party preference, OSP reform and other payphone proceedings).

⁴ CCA Comments at 10-11; AT&T Comments at 3-4.

⁵ Comments of the Ad Hoc Coalition for the Right to Communicate at 13-26 (Ad Hoc Comments); Comments of the National Association of State Utility Consumer Advocates at 7-9 (“NASUCA Comments”).

⁶ The commenters’ reliance on sections 201, 226, 276 of the Communications Act of 1934, as amended, and the Competitive Networks proceeding as giving this Commission jurisdiction is misplaced. These provisions solely relate to common carriers. RBOC Coalition Comments at 7-8; T-Netix Comments at 11-15.

Moreover, courts have repeatedly upheld the authority of prison officials to further security concerns when they make decisions on telecommunications services for inmates.⁷ As MCI stated in its comments, inmates do not have a constitutional right to use the telephone to call friends and family.⁸ While MCI does not dispute that such calls may serve a rehabilitative purpose for some inmates, it is also undeniable that inmate telephone use is a matter of public safety as well. Indeed, in considering claims against DOCS' telecommunications' policies, courts apply a rational basis standard where, as long as DOCS' regulations are reasonably related to legitimate penological interests, they will be deemed constitutionally sound.⁹

It is an unfortunate reality, but one that has long been recognized, that providing telephone service to prison systems presents unique security concerns that are not present when providing traditional telephone service to the general public. While the Petitioners and some of their supporters try to demonize the inmate payphone providers,¹⁰ it is the

⁷ CCA Comments at 14-15; RBOC Coalition Comments at 9-10; T-Netix Comments at 19; Comments of the Association of Private Correctional and Treatment Organizations at 8-9 ("APCTO Comments").

⁸ Ad Hoc cited a string of cases regarding the importance of telephone use to communications between legal counsel and inmates. There is no dispute in the record that such communications are critical, but that does not mean that all telephone use by inmates warrants special treatment. For example, in In re Ron Grimes, 208 Cal. App. 3d 1175 (1989), while the court did find that the jail's collect call only policy interfered with inmate access to counsel, the court ordered the installation and maintenance of a toll-free line from the jail to the public defender's office. Regular telephone use by inmates was unaffected. In fact, no case cited by Ad Hoc ruled that collect call only policies were *per se* unconstitutional. (MCI notes that Ad Hoc did not include a copy of the unpublished Lynch v. Leis decision.).

⁹ AT&T Comments at 6-7; CCA Comments at 14-15; T-Netix Comments at 19; APCTO Comments at 8-9.

¹⁰ Ad Hoc, for example, criticizes the call blocking techniques and billing services of exclusive service providers. Comments at 10-12. In n. 30, Ad Hoc cites Diane King's comments filed in In re Petition of Outside Connection, Inc. regarding MCI's blocking practices. In that proceeding, MCI explained that it was authorized to block inmate calls

states and prison authorities that decide, appropriately so, what type of calling services should be made available to inmates. And, the record supports this approach. Even some supporters of the petition illustrate that this is an issue most appropriate for state and local officials. For example, NASUCA's comments point to several states that have initiated legislative and administrative action to address commissions and rates charged by inmate telephone service providers.¹¹ MCI's comments also discussed state initiatives.¹² Further, as discussed below, some states have examined alternatives to a single provider, collect call only system. The state level is where these issues should be addressed.

II. PETITIONERS' PROPOSAL IS UNWORKABLE

Despite their claim that a multiple carrier system is technically and economically feasible,¹³ Petitioners' one-size fits all approach of a multiple provider system is just not feasible. The Petitioners have also oversimplified the costs of implementing, operating and maintaining a multiple carrier system in an environment that is generally equipped for a single provider system. There is a wealth of criticism of several aspects of Thomas

when: 1) customers refuse to pay their bills or are defrauding MCI, 2) there is no billing and collection agreement with the customer's LEC, and 3) when the called party's billing, name and address information is not available and cannot be confirmed directly with the consumer. Consumers are not required to subscribe to MCI for long distance service in order to receive inmate calls. Customers have the option of establishing prepaid accounts -- which is what the Wright Petition proposes -- or choosing a LEC with a billing and collection agreement with MCI. If neither option is chosen, the customer will receive a separate -- not duplicate -- bill directly from MCI. Further, if a customer has a large unpaid bill, this will trigger a high toll fraud alert. If MCI cannot verify with the end user whether the calls are legitimate, the line is blocked. If a customer is blocked, the customer is called and directed to a toll free number from which to obtain information regarding the block. The block will remain in effect only as long as necessary to validate their payment information. The industry average for such validation and block removal is two to three days. MCI's blocking practices are consistent with standard industry practice.

¹¹ NASUCA Comments at 10-15.

¹² MCI Comments at 33-34.

¹³ Wright Petition at 3.

Dawson's proposal. This should come as no surprise since, as some commenters point out, Dawson, on whom the Petitioners principally rely, has limited experience with prison payphone systems.¹⁴ He fails to recognize that there is great variance in expenses associated with telephone service in the prison systems.¹⁵ Dawson also fails to appreciate the complexity involved in satisfying the security needs of prisons in a single provider system, much less implementing a multiple provider system.¹⁶ Each DOC has different requirements based on state law, class of security of the institution, budget, availability of telecommunications services in the local area and number of experienced providers willing to supply services to a prison.¹⁷

Based on the record developed thus far, the record establishes that there remain many unanswered questions concerning the Petitioners' proposal. There are concerns that the hardware, software, equipment or standards do not exist to implement the proposal, whether the billing is performed by the interexchange carrier or the inmate calling system ("ICS") provider.¹⁸ If they did exist, the question becomes which ICS provider would be willing or able to provide hardware and software if revenues were capped as proposed by the Petitioners.¹⁹

¹⁴ The Ohio Department of Rehabilitation and Correction (Ohio DRC) Comments at 3;

¹⁵ New Jersey Department of Corrections at 2 ("New Jersey DOCS Comments").

¹⁶ T-Netix Comments at 21-23; New Jersey DOC at 2; APTCO Comments at 12-13.

¹⁷ T-Netix Comments at 24; Ohio DRC Comments at 3; Comments of the New York Department of Corrections at 9 ("NY DOCS Comments").

¹⁸ CCA Comments at 29-30. MCI read the proposal to mean that the ICS provider would perform the billing functions, which would result in increased administrative costs and customer confusion. Other commenters, however, read the proposal as requiring the interconnecting interexchange carriers to perform billing functions, which would complicate billing, impose much greater costs of the ICS provider, and open greater opportunities for security breaches.

¹⁹ New Jersey DOCS Comments at 2; Kansas DOCS Comments at 1 (only one carrier responded to its RFP under the single provider system).

Assuming arguendo, that a multicarrier system could be universally implemented, the Petitioners' do not address the security issues that would arise if multiple carriers were to interconnect with an ICS provider. One issue is whether interconnecting carriers would have any incentive to be responsible for, and whether DOCS could impose responsibility for, security breaches. MCI agrees with APTCO that exclusive contracts, which allow DOCS to require ICS providers to post a performance bond to ensure against security breaches, are an essential component of maintaining security.²⁰ Another issue is how security of the interexchange interconnection would be managed and supervised on calling platforms located on prison premises.²¹ Under the Petitioners' proposal, call routing would be more complicated and would create opportunities for security breaches due to such things as entering the incorrect debit card number, or the inability to prevent number reorigination, call forwarding and three-way calling.²²

It is undeniable that the administrator of a particular correctional facility is the most appropriate entity to be tasked with determining what type of inmate calling services best suits the laws, capabilities and security needs attendant to that facility. As the record reflects, some DOCS have already considered whether alternatives to the collect calling system are economically feasible and appropriate for their facilities. For example, the Massachusetts DOCS has found that a collect only calling system is less costly.²³ Similarly, the New York DOCS has already determined that a debit calling system would greatly increase the administrative costs of its inmate calling program.²⁴ In

²⁰ APTCO Comments at 4.

²¹ T-Netix Comments at 25-26.

²² RBOC Payphone Coalition Comments at 10-12.

²³ Massachusetts Department of Corrections Comments at 11.

²⁴ NY DOCS at 10.

addition, the New York DOCS and The Ohio DOCS view the single provider system as a key component in ensuring that their quality of service and security concerns are met.²⁵ The Kansas DOC, however, permits collect calls, direct billing and prepaid calls as options.²⁶ In addition, Evercom points out that although it provides prepaid cards to some prisons, some administrators do not permit prepaid cards because of security concerns.²⁷

CONCLUSION

For the foregoing reasons, MCI recommends that the Commission deny the Wright Petition in its entirety.

Respectfully submitted,

MCI, INC.

Lawrence Fenster
Kecia Boney Lewis
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6513

Dated: April 21, 2004

²⁵ Id. at 12-14; The Ohio DRC Comments at 3.

²⁶ Kansas Department of Corrections Comments at 1.

²⁷ Comments of Evercom Systems, Inc. at 10-11.